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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 10/726,182 | 12/02/2003 | Brian W. Brandner | 2681.3184.001 (588AW) | 2575 |
| 23399 | 7590 | 04/06/2006 | EXAMINER | |
| REISING, ETHINGTON, BARNES, KISSELLE, P.C. P O BOX 4390 TROY, MI 48099-4390 | | | BRADEN, SHAWN M | |
| | | | ART UNIT | PAPER NUMBER |

3727

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/726,182 | BRANDNER ET AL. | |
| | Examiner | Art Unit | |
| | Shawn M. Braden | 3727 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 13-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 9-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/02/2003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, drawn to a method of manufacturing a nipple, classified in class 264.
 - II. Claims 9-12, drawn to a fuel tank classified in class 220, subclass 563.
 - III. Claims 13-18, drawn to a method of manufacturing a tank, classified in class 264.
 - IV. Claims 19-21, drawn to a fill nipple, classified in class 220, subclass 86.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and IV are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process for making the nipple could be used to make a tank or a cap.
3. Inventions II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process

(MPEP § 806.05(f)). In the instant case the process for making a tank could be used to make a nipple or a cap.

4. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions I is a method of manufacturing a nipple and II is an apparatus of a fuel tank.

5. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

6. Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are a method of making a tank and a method of making a nipple, they are not related.

7. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

8. Inventions II and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are a tank and a nipple.

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9. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

10. During a telephone conversation with Bill Francis on 3/23/2006 a provisional election was made with traverse to prosecute the invention of a fuel tank, claims 9-12. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-8&13-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

11. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Potter (USPN 6,860,398).

14. With respect to claim 9, Potter shows a shell (50) defining an interior for holding fuel and having an opening (45) for receiving fuel into the interior;

A fill nipple having an outer surface (22) and an inner surface (42) defining a passage (41) extending between a pair of generally opposed ends of the fill nipple with one end attached to the shell (50) with the passage (41) aligned with the opening allowing fuel to flow through the passage and into the cavity, the fill nipple has an inner layer (42) of material forming the inner surface of the fill nipple, an outer layer (20) of a material forming the outer surface of the fill nipple, a vapor barrier layer (51) between the inner and outer layers (col. 4 ln. 52), and a pair of adhesive layers with one adhesive layer disposed between the outer layer (20) and the vapor barrier layer (51) and the other adhesive layer disposed between the inner layer (42) and the vapor barrier layer (51) (fig. 1) (col. 1 ln. 44-61).

With respect to claim 10, Potter discloses the inner and outer layers can be made of a HDPE material (col. 5 ln. 60-63).

With respect to claim 11, Potter shows the one end is defined in part by a radially outwardly extending flange (49) that presents at least a portion of the inner surface for attachment to the shell (50).

With respect to claim 11, Potter shows the The fuel tank of claim 1 wherein a plastic weld joint attaches the flange to the shell.

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15. Claims 9,10,12 are rejected under 35 U.S.C. 102(e) as being anticipated by Stangier (US Pub # 20040124567).

16. With respect to claim 9, Stangier shows a shell (5) defining an interior for holding fuel and having an opening (9) for receiving fuel into the interior;

A fill nipple having an outer surface (3) and an inner surface (4) defining a passage extending between a pair of generally opposed ends of the fill nipple with one end attached to the shell (5) with the passage aligned with the opening allowing fuel to flow through the passage and into the cavity, the fill nipple has an inner layer (4) of material forming the inner surface of the fill nipple, an outer layer (3) of a material forming the outer surface of the fill nipple, a vapor barrier layer (7) between the inner and outer layers (Fig.1), and a pair of adhesive layers (23) with one adhesive layer (23) disposed between the outer layer (3) and the vapor barrier layer (7) and the other adhesive layer disposed between the inner layer (4) and the vapor barrier layer (7) (fig.3).

With respect to claim 11, Stangier shows the one end is defined in part by a radially outwardly extending flange that presents at least a portion of the inner surface (4) for attachment to the shell (5)(fig.1).

17. With respect to claim 12, Stangier shows plastic weld joint attaches the flange to the shell (5) (fig.1).


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

smb


JES F. PASCUA
PRIMARY EXAMINER